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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 MACLEAN TOWNHOMES, LLC, a
10 Washington limited liability company, as
11 assignee of American Heritage Builders, a
Washington corporation,

12 Plaintiff,

13 v.

14 CHARTER OAK FIRE INSURANCE
CO., a foreign insurance company,

15 Defendant.
16

CASE NO. C06-1093BHS

ORDER DENYING
PLAINTIFF'S MOTION FOR
JUDGMENT AS A MATTER
OF LAW RE: BAD FAITH
CLAIM AND DEFENDANT'S
MOTION FOR DIRECTED
VERDICT

17 This matter comes before the Court on Plaintiff's Motion for Judgment as a Matter
18 of Law Re: Bad Faith Claim (Dkt. 289) and Defendant's Motion for Directed Verdict
19 (Dkt. 291). The Court has considered the pleadings filed in support of each motion and
20 the remainder of the file and hereby denies the motions for the reasons stated herein.

21 **I. PROCEDURAL AND FACTUAL BACKGROUND**

22 On August 3, 2006, Plaintiff MacLean Townhomes, LLC filed a complaint for
23 declaratory relief and monetary damages against Defendant Charter Oak Fire Insurance
24 Co. Dkt. 1. Plaintiff's claims are based on the assignment of an insurance contract
25 between assignor American Heritage Builders (AHB) and Defendant Charter Oak. Dkt.
26 56 at 1. One of Plaintiff's claims is that Charter Oak acted in bad faith with respect to
27 AHB's claims for indemnity. Dkt. 1, ¶¶ 46-49.
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1 On October 24, 2008, the bench trial began. Dkt. 285. Plaintiff presented its case
2 on October 24th and 28th. Dkts. 285 and 293. On October 28, 2008, after Plaintiff rested,
3 it orally moved for judgment as a matter of law and Defendant orally moved for directed
4 verdict. Dkt. 293. Plaintiff filed a brief in support of its motion that evening. Dkt. 289.
5 On October 29, 2008, Defendant filed a brief in support of its motion. Dkt. 291.

6 II. DISCUSSION

7 A. Defendant's Motion for Directed Verdict

8 Defendant moves for a "directed verdict" under Fed. R. Civ. P. 50. Dkt. 291 at 7.
9 "As of December 1, 1991, however, the hoary terms 'judgment notwithstanding the
10 verdict' and 'directed verdict' were forsaken. Now, both pre-verdict and post-verdict
11 motions under Rule 50 are labelled motions for 'judgment as a matter of law.'" *Doctor's*
12 *Associates, Inc. v. Weible*, 92 F.3d 108, 111 (2nd Cir. 1996) ("Although the bottles have
13 changed, the wine remains the same: the standard . . . is unaltered."). The Court will
14 consider Defendant's motion as a motion for judgment as a matter of law. Regardless, as
15 this case involved a bench trial rather than a jury trial, Rule 50 is inapplicable. *See* Fed.
16 R. Civ. P. 50, 52(c); *see also* 9A Charles A. Wright & Arthur R. Miller, Federal Practice
17 and Procedure § 2523 (2d ed. 1994). Therefore, the Court denies Defendant's motion.

18 B. Plaintiff's Motion for Judgment as a Matter of Law

19 Plaintiff moves for judgment as a matter of law on its bad faith claim against
20 Defendant. Dkt. 289. Under Fed. R. Civ. P. 52(c), a court may rule on partial findings as
21 follows:

22 If a party has been fully heard on an issue during a nonjury trial and
23 the court finds against the party on that issue, the court may enter judgment
24 against the party on a claim or defense that, under the controlling law, can
25 be maintained or defeated only with a favorable finding on that issue. The
26 court may, however, decline to render any judgment until the close of the
27 evidence. A judgment on partial findings must be supported by findings of
28 fact and conclusions of law as required by Rule 52(a).


1 Fed. R. Civ. P. 52(c). The Court declines to render judgment on partial findings for
2 Plaintiff on only Plaintiff's case and will issue findings of fact and conclusions of law
3 based on the entire record under Fed. R. Civ. P. 52(a)(1).

4 **III. ORDER**

5 Therefore, it is hereby

6 **ORDERED** that Plaintiff's Motion for Judgment as a Matter of Law Re: Bad
7 Faith Claim (Dkt. 289) is **DENIED** and Defendant's Motion for Directed Verdict (Dkt.
8 291) is **DENIED**.

9 DATED this 3rd day of November, 2008.

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13 BENJAMIN H. SETTLE
14 United States District Judge
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